IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.444 of 2007

Saravanan .. Petitioner

Vs

1. The State of Tamil Nadu rep. By its
   Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George,
   Chennai 600009.

2. The Commissioner of Police,
   Salem City. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus call for the entire records leading to the detention of the petitioner's friend by name Murugesan son of Dharmalingam under Act 14/82 vide detention order dated 16.2.2007 on the file of the 2nd respondent herein, made in proceedings CMP.No.3/VIDIO PIRATE/Salem City/2007 dated 16.2.2007 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Honourable Court.

For Petitioner : Ms.R.Subadra Devi
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

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ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The order dated 16.2.2007, passed by the second respondent, dubbing one Murugesan, son of Dharmalingam, as a Video Pirate and directing his detention under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video

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Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), is challenged in this writ petition by a friend of the detenu.

2. The order of detention dated 16.2.2007 came to be passed based on the ground case said to have taken place on 9.2.2007 on the basis of the complaint lodged by one S.Murugesan before the Inspector of Police, Vedeo Piracy Cell, CBCID Unit, Salem. According to the complainant, he is working as Manager in Salem Films Distributors Council, Salem. In his complaint, he has stated that as per the reliable information received by him and the enquiries made by him, one D.Murugesan residing at Door No.1/357, Kathayammal Nagar, Maniyanoor, Salem, is indulging in selling duplicate VCD and DVD of Tamil Films without obtaining any right under the Copyright Act. Based on his complaint, a case was registered in Crime No.12/2007 on the file of Video Piracy Cell, CBCID, Salem under Sections 51 r/w 63 and 52(A) r/w 68(A) of Copy Right Act, 1957 and the said Murugesan, the detenu herein, was arrested at 15.10 hours on 9.2.2007.

3. The second respondent, taking note of this case as a ground case and finding that there are two adverse cases pending against the detenu for the offences punishable under the Copy Right Act in Crime No.3669/2004 on the file of Annadhanapatty Police Station and 79/2005 on the file of Salem Video Piracy Cell, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Video Pirate.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 16.2.2007 on the only ground that the pre-detention representation dated 13.2.2007 sent by the wife of the detenu, which was received by the detaining authority on 14.2.2007, was neither considered by the detaining authority nor placed before the Advisory Board.

5. Concededly, the wife of the detenu made a representation on 13.2.2007 even before the detention order dated 16.2.2007, which was neither considered by the detaining authority, nor placed before the Advisory Board, which, in our considered opinion, vitiates the impugned order of detention. Hence, the same is quashed and the detenu is directed to be released forthwith, unless he is required in connection with any other case.

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The habeas corpus petition is allowed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To

1. The Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George,
   Chennai 600009.

2. The Commissioner of Police,
   Salem City.

3. The Superintendent,
   Central Prison,
   Salem.

4. The Joint Secretary to Government,
Public [Law and Order]
Fort St. George, Chennai 9.

5. The Public Prosecutor,
   High Court, Madras.

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